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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of:)	
)	
Computer III Remand Proceedings;)	CC Docket No. 90-623
Bell Operating Company Safeguards;)	
and Tier 1 Local Exchange Carrier)	
Safeguards)	
)	
Application of Open Network)	CC Docket No. 92-256
Architecture and Nondiscrimination)	
Safeguards to GTE Corporation)	

COMMENTS OF
TELE-COMMUNICATIONS ASSOCIATION

Tele-Communications Association ("TCA"), by its attorneys, respectfully submits its comments in response to the Commission's Public Notice in the above-captioned proceedings.¹ By that Notice, the Commission seeks comment on whether changes in the rules regarding Customer Proprietary Network Information ("CPNI") are necessary to achieve the best balance between customers' privacy interests, competitive equity, and efficiency. As discussed below, TCA commends the Commission for re-examining the CPNI rules and urges adoption of a prior consent standard for all customers.²

¹ FCC 94-63 (released March 10, 1994).

² TCA is an association of telecommunications managers. Its members represent nearly 1000 companies, government agencies, and non-profit institutions. Many of these entities have fewer than twenty lines -- and accordingly, under the current CPNI rules, must take affirmative action in order to maintain the privacy and integrity of their CPNI. Consequently, TCA has a direct interest in, and is eminently qualified to comment on, any changes in the CPNI rules.

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The existing CPNI rules, by requiring prior consent only for customers with more than twenty lines, essentially ignore the privacy interests of small business and residential customers. They rest on the untenable assumption that the expectation of privacy is greater when such information is disclosed to a third party vendor of unregulated products and services than when it is disclosed to telephone company personnel responsible for marketing such products and services. In reality, users do not expect telephone companies to make use of CPNI to market unregulated services and products. To the contrary, CPNI includes data -- such as where a customer calls, how often a customer calls particular numbers, what different services a customer utilizes, how long a customer stays on the telephone, and where a customer plans to expand its operations or discontinue operations -- that are inherently private and potentially quite sensitive. The degree of sensitivity does not vary depending on whether the information is disclosed to telco marketing personnel or unaffiliated companies.

Moreover, telephone companies have been entering "alliances, acquisitions, and mergers"³ that extend their operations into areas far afield from traditional telephone services. As the BOCs, in particular, prepare for a hyper-integrated future -- where the telephone company becomes a

³ See Public Notice at 2-3.

provider of transmission services, information content, entertainment, customer premises equipment, consulting services, and countless other offerings -- the presumption that they should enjoy automatic access to the CPNI of residential and small business customers will become even less defensible. It is absurd to require that consent precede disclosure of information to a third-party vendor, but to eliminate the consent requirement if a BOC buys that vendor.

Looking to the future, privacy rights must be better protected for communications to become the enabling technology envisioned by the National Information Infrastructure initiative. For example, under the NII, communications lines will be used to transmit sensitive medical information and to access a multitude of remote data bases. Customers might be reluctant to take full advantage of these services, however, if they know that a BOC could determine that they were transmitting information to a medical clinic, or had a preference for accessing particular types of data bases. For many applications, the fact that a particular transmission has occurred may be just as deserving of protection as the content of the transmission.

Beyond conforming to customer expectations of privacy, a prior consent requirement also would promote competitive equity. CPNI will assume even greater competitive significance as the BOCs enter more businesses. Quite

simply, the greater the degree of horizontal integration, the more likely that a BOC will compete against its customers.

Small businesses would be particularly susceptible to unfair competition based on a BOC's access to such information as expansion plans and identity of customers. Indeed, even if a small business were aware of its right to restrict access to its CPNI, a BOC could still gain an unfair advantage by utilizing the CPNI of the business's residential customers (who currently are not informed of their right to restrict access). A BOC could, for example, identify residents of a particularly wealthy subdivision who call a particular business's customer service number. Similarly, a BOC could readily identify customers who use call forwarding to an answering bureau, or purchase services used in conjunction with alarm monitoring. In such situations, the privacy of the residential customer is compromised and the BOC gains an unwarranted advantage vis-a-vis its small business competitors.

Finally, any inefficiencies that a prior consent rule might create would be relatively minor.⁴ The BOCs have not hesitated to centralize such vital functions as repair services (where in many locations, requests for repairs are

⁴ A prior consent rule would create no inefficiencies for residential and small business customers. Any customer, small or large, that wanted "one-stop shopping" for regulated and unregulated services could simply authorize disclosure of its CPNI.


made over 800 lines connected to remote service centers). Certainly, the marketing of unregulated services and products to residential and small business customers could be handled in the same way. Indeed, because such customers generally do not have existing dedicated account teams, any inefficiencies created by a prior consent rule should be less than those engendered when the Commission required prior consent for customers with more than twenty lines.

For the foregoing reasons, TCA urges the Commission to require that affirmative consent be obtained from all customers, regardless of size, before their CPNI may be disclosed to personnel responsible for marketing unregulated services and products. Such a rule would plainly strike the most appropriate balance between customer expectations of privacy, competitive equity, and efficiency.

Respectfully submitted,

TELE-COMMUNICATIONS ASSOCIATION

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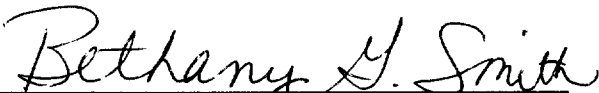
April 11, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 1994, I caused copies of the foregoing "Comments of Tele-Communications Association" to be hand-delivered to the following:

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